## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION NO. 5:08-CR-265-BO

NO. 5:08-CR-265-BO NO. 5:13-CV-118-BO		FILED IN OPEN COURT W	
DEMETHRIC ANTWAN HINNANT, Petitioner,	) ) )		Julie A. Richards, Clerk US District Court Eastern District of NC
v.	)	ORDER	
UNITED STATES OF AMERICA, Respondent.	) )		

This matter is before the Court on petitioner's amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner, Mr. Hinnant, asserts that he is not guilty of having been a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) in light of the Fourth Circuit's holding in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc).

The government has responded to Mr. Hinnant's motion, stating that it waives its reliance on the statute-of-limitations defense, that motion has merit, and that it presents a cognizable claim for relief under § 2255 [DE 42].

In light of the foregoing and the hearing held in this matter on May 1, 2013, the Court accepts the government's waiver and reaches the merits of Mr. Hinnant's claim. Mr. Hinnant's motion pursuant to 28 U.S.C. § 2255 [DE 41] is GRANTED and the judgment, conviction, and sentence entered in this matter on February 23, 2009, are hereby VACATED. Mr. Hinnant is ORDERED to be released from federal custody forthwith.

SO ORDERED, this \_\_\_\_ day of May, 2013.

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE